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RECENT IMPORTANT DECISIONS

BANKRUPTCY—ACTION BY TRUSTEE—RIGHT OF SET-OFF.—The Trustee of a bankrupt estate brought an action against the defendant to recover a sum due the estate on a contract entered into between the bankrupt and the defendant. The action was brought after the time limited by § 57 n of the Bankruptcy Act for proving claims against the estate. To defeat the action, defendant set up as a counterclaim the damages he had sustained from a breach of the contract by the bankrupt which claim had not been proved against the estate. *Held*, he was not precluded from setting up such a counterclaim. *Norfolk & W. Ry. Co. v. Graham* (1906), C. C. A., Fourth Circ., 145 Fed. Rep. 809

The contention was that the counterclaim, although, provable in its nature, was not proved in the bankruptcy proceedings within the time allowed by § 57 n, and was therefore not such a counterclaim as could be set off. This section reads: "Claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication." In passing on this the court said: "This section relates merely to the proof and allowance of claims against the bankrupt in the bankruptcy proceedings. But we find no warrant for holding that his failure to thus prove it is a bar to the use of such claim in diminution of, or to defeat the claim of the trustee when asserted in an independent action. We think the true solution of the question is that the counterclaim which may be set off in an independent action brought by the trustee is, subject to § 68 b, one that is provable in its nature, and need not necessarily be one that has been or may yet be proved in the bankruptcy proceedings." The section referred to reads: "A counterclaim or set-off shall not be allowed in favor of any debtor of the bankrupt which (1) is not provable against the estate."

In *COLLIER ON BANKRUPTCY*, 5th Ed. p. 541, it is said: "Strictly the time when the right to set-off is determined is the time when the petition is filed." The court's conclusion seems to be just, for this was a claim provable at the time the petition was filed. Besides any other rule might work an injustice to a debtor, who was also a creditor of the estate, for if from a lack of knowledge of the proceedings, or for any other reason he neglected to prove his claim against the estate, and the trustee delayed bringing an action until after the time limited for proving claims, he would be entirely precluded from setting up his claim and would become a mere debtor of the bankrupt.

BILLS AND NOTES—FORGED CHECK—PAYMENT—RECOVERY BACK.—Defendants had received and paid a check, drawn on the plaintiffs, which was endorsed in blank to the defendants. The signature of the drawer was forged. It was transmitted in the usual course of business through several banks and finally paid by plaintiffs without discovery of the forgery. The supposed drawer discovered the forgery some time later and refused to allow credit to plaintiffs for the amount of the check. They immediately notified defendants, returning the check at the same time. Defendants refused to refund. *Held*, a drawee who has by mistake paid a forged check may recover the money paid unless the party receiving the money has been misled